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BANK PEMBANGUNAN MALAYSIA BHD v. SIDQI AHMAD SAID AHMAD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ATAN MUSTAFFA YUSSOF AHMAD J
[SUIT NO: WA-22NCC-264-06-2022]
1 JULY 2025

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Abstract – *(i) Discovery to trace misappropriated funds can be granted even if there's a significant time gap between the original disbursement and later payments, as funds can be channelled through multiple entities over time; (ii) The formal recording of transactions in audited statements does not negate the need for discovery if there are discrepancies, lack of supporting documentation, or signs of concealed fund destinations; (iii) Discovery is not a fishing expedition merely because it might incidentally reveal information about additional parties, provided it is otherwise properly founded and necessary; (iv) In cases of sophisticated financial fraud, a broad scope of discovery, including details of ATM cards, banking facilities, and other banking products, is justified to trace all potential avenues of fund dissipation.*

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CIVIL PROCEDURE: *Discovery – Application for – Parties entered into loan agreement – Borrower defaulted in repayment – Borrower obtained stay of execution subject to bank's right to appoint receiver and manager ('R&M') under debenture – Discovery of irregularities in relation to loan – Bank sought discoveries of banking records regarding certain accounts in order to trace disbursed loan sum – Whether documents sought necessary – Whether temporally impossible for payments made to alleged recipients to have originated from loan funds – Whether R&M's findings one-sided assertions – Whether formal documentation and accounting of transactions in audited statements negated suggestion of fraudulent conduct – Whether discovery application constituted fishing expedition – Whether procedurally proper – Rules of Court 2012, O. 24 r. 7A*

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BANKING: *Banking facility – Loan facility – Application by bank for discovery of documents – Discovery of irregularities in relation to loan – Bank sought discoveries of banking records regarding certain accounts in order to trace disbursed loan sum – Whether documents sought necessary – Whether temporally impossible for payments made to alleged recipients to have originated from loan funds – Whether receiver and manager's findings one-sided assertions – Whether formal documentation and accounting of transactions in audited statements negated any suggestion of fraudulent conduct – Whether discovery application constituted fishing expedition – Whether procedurally proper – Bankers' Books (Evidence) Act 1949, s. 7*

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The plaintiff and Aries Telecoms (M) Berhad ('Aries') had entered into a facility loan agreement of RM400 million to partly finance a network development project. The loan was then disbursed to Aries but Aries later defaulted on the repayment of the said loan and, at the High Court, summary judgment was entered against Aries. Aries then appealed to the Court of Appeal and obtained a stay of execution, subject to the plaintiff's right to appoint a receiver and manager ('R&M') under the debenture. Upon investigation by the R&M appointed by the plaintiff, certain irregularities were discovered in relation to the loan. The plaintiff filed this suit against the defendants as it was discovered that there were payments made by Aries to the fourth ('Roslina'), seventh until ninth, 11th, 17th, 22nd, 24th ('BVS Trinity') and 25th ('VCM Malaysia') defendants ('said defendants'). The plaintiff's application for a *Mareva* injunction was dismissed. In connection with the *Mareva* application proceedings, the defendants had provided letters of undertaking, respectively, where the said defendants' assets, including their bank accounts, were subjected to restriction pending the disposal of the *Mareva* application. Under the terms of these letters of undertaking, the plaintiff agreed that disclosure of banking information would only be required if the *inter partes Mareva* application was allowed by the court. Since the *Mareva* application was dismissed, the plaintiff had agreed that no further immediate disclosures of assets, including bank statements, would be required from the respective defendants. However, the plaintiff later sought discoveries of banking records regarding the accounts of Roslina, BVS Trinity and VCB Malaysia, for the purpose of tracing the disbursed loan sum ('encl. 730'), arguing that the records were necessary to locate and preserve assets subject to its proprietary claim. The said defendants opposed the application on the grounds that: (i) the entire loan amount of RM400 million had been exhausted from Aries' account by 18 November 2013. Consequently, it was temporally impossible for any payments made to Roslina, BVS Trinity and VCB Malaysia between 2016 and 2018 to have originated from the loan funds, rendering the application futile ('temporal impossibility argument'); (ii) the application violated the existing letters of undertaking from the *Mareva* injunction; (iii) the R&M's findings were one-sided assertions made without proper verification; (iv) the payments received by the said defendants were legitimate business transactions properly recorded in Aries' audited financial statements. The formal documentation and accounting of the transactions in audited statements negated any suggestion of fraudulent conduct; (v) the application constituted a fishing expedition for post-disbursement transactions to find new defendants; (vi) the application was procedurally improper as it represented an attempt to repair and improve the plaintiff's case after various unsuccessful applications, particularly the failed *Mareva* application; (vii) the breadth of documents sought, particularly the requests for details of ATM cards, banking facilities and other banking products, extended beyond what was

necessary for tracing loan funds and amounted to an impermissible fishing expedition; and (viii) there was a complete disconnection of Roslina, BVS Trinity and VCB Malaysia from the original loan transaction as they were neither parties to the loan agreement nor involved in the pre-disbursement period or project execution;

Held (allowing encl. 730):

(1a) The defendants' temporal impossibility argument was unpersuasive. The fact that the loan funds left Aries' account by November 2013 did not preclude the possibility that these funds were subsequently channeled through various entities before reaching Roslina, BVS Trinity and VCB Malaysia in 2016 and 2018. The evidence, including the R&M's findings of unjustified payments and suspicious transactions involving the said defendants, established sufficient grounds for allowing discovery to trace the movement of the loan funds, regardless of temporal gaps. (paras 24 & 27)

(1b) The plaintiff had demonstrated a proper basis for the discovery notwithstanding the temporal gap between the loan disbursement and the payments to Roslina, BVS Trinity and VCB Malaysia. The discovery sought was (i) designed to identify and determine where these monies have been subsequently transferred, withdrawn or dissipated, which inherently required following complex money trails that could span years and multiple entities; and (ii) relevant and necessary to establish the complete chain of fund flows and determine whether Roslina, BVS Trinity and VCB Malaysia were the ultimate recipients of the misappropriated loan funds through intermediate transactions. (paras 32 & 33)

(2) The letters of undertaking did not bar this application. The undertakings were specifically focused on disclosure obligations arising from the *Mareva* application proceedings, a position consistently advanced by the plaintiff. The 'without prejudice' nature of the undertakings reinforced that they were not intended to create binding obligations beyond their specific *Mareva*-related context. The plaintiff remains entitled to pursue discovery through appropriate applications, under O. 24 r. 7A of the Rules of Court 2012 ('ROC') and/or s. 7 of the Bankers' Books (Evidence) Act 1949, notwithstanding the existence of the undertakings. (paras 36 & 42)

(3) The documentary findings of the R&M, even if requiring further investigation and clarification through the proposed discovery process, provided sufficient evidentiary foundation for the discovery sought and demonstrated that the documents requested were both relevant and necessary for the fair disposal of these proceedings. The existing evidence established adequate grounds to justify compelling

disclosure of banking records that may reveal the ultimate disposition of funds and assist in tracing assets, regardless of any methodological limitations in the R&M's initial investigation. (para 50)

(4) The apparent discrepancies between payment documentation and actual recipients, combined with the systematic lack of supporting business documentation for substantial payments and the deliberate concealment of the true destinations of funds, provide sufficient basis for allowing discovery notwithstanding the formal recording of these transactions in audited statements. The comprehensive nature of modern banking meant that effective asset tracing required access to all potential channels through which funds might have been transferred or accessed, beyond the superficial records that had been formally documented. (para 58)

(5) The fact that the discovery might incidentally reveal information about additional parties could not delegitimise applications that were otherwise properly founded and necessary for the fair disposal of the proceedings. The application represented a measured and appropriate response to the complexity of the alleged fraud and the sophisticated nature of modern financial transactions through which the alleged misappropriation was conducted. (para 76)

(6a) Order 24 r. 7A of the ROC expressly allows for applications for third-party discovery to be made after the commencement of proceedings, without imposing any limitations based on the timing of the suit. The application was duly served to the relevant parties in accordance with the procedural requirements. Furthermore, there was no issue of delay on the part of the plaintiff as this application was filed approximately one year before the trial dates fixed by the court. Evidence showed that the application was made *bona fide* and in accordance with proper legal procedure. (para 79)

(6b) The discovery sought served materially different purposes from the asset preservation aims of the *Mareva* application. The *Mareva* application pertained specifically to the flow of funds from Aries' to the said defendants with the objective of obtaining a *Mareva* order against the said defendants' bank accounts. In contrast, this application aimed to ascertain if the payments unlawfully received by Roslina, BVS Trinity and VCB Malaysia from the loan sum were withdrawn and/or transferred by these defendants out of their respective bank accounts and to ascertain the details of such transfers, with the ultimate objective of tracing and locating these monies. (para 80)

(6c) The fact that this application followed unsuccessful attempts at other forms of relief did not render them improper – they represented the pursuit of a distinct procedural remedy with its own legal basis and requirements. There were no authorities indicating that the filing of a

Mareva injunction barred an applicant from subsequently filing a discovery application. The plaintiff was entitled to seek a discovery order as long as it met the relevant criteria for such an order, which differed from the requirements for obtaining a *Mareva* order, highlighting the distinct legal basis and requirements of discovery. (para 82)

(7a) The scope of documents sought was both appropriate and necessary given the nature of the alleged fraud and the sophistication of modern banking transactions. The inclusion of requests for information about ATM cards, banking facilities and other banking products was justified by the need to understand all potential means through which the loan funds might have been accessed or transferred. The purpose was to identify and determine where these monies had been subsequently transferred, withdrawn or dissipated, thereby enabling further proceedings against appropriate individuals or entities that may be in receipt of these monies. (paras 87 & 92)

(7b) This was not a fishing expedition but rather a carefully structured request for specific categories of documents that could reasonably be expected to assist in tracing the movement of the loan funds through various banking channels and instruments. The comprehensive nature of the requests served the legitimate purpose of ensuring no potential avenue for fund movement was overlooked. (paras 101 & 102)

(8) The discovery sought represented a legitimate means of investigating the movements of funds to parties who, while not the original participants in the loan transaction, may have been recipients of its proceeds through subsequent transfers. The application aimed to trace and locate the fund flow of monies unlawfully received by Roslina, BVS Trinity and VCB Malaysia, with a real prospect that the information may lead to the location or preservation of assets to which the plaintiff was making a proprietary claim. This approach was both relevant and necessary for the plaintiff's claims, particularly in identifying and determining where these monies had been subsequently transferred, withdrawn or dissipated. (para 112)

Case(s) referred to:

Arab Monetary Fund v. Hashim & Ors (No 5) [1992] 2 All ER 911 ***(refd)***

Bankers Trust Co v. Shapira [1980] 3 All ER 353 ***(refd)***

Billion Prima Sdn Bhd & Anor v. Nutech Company Ltd & Anor [2017] 1 CLJ 179 HC ***(refd)***

CIMB Investment Bank Bhd v. Ernst & Young & Anor [2020] CLJU 1286; [2020] 1 LNS 1286 HC ***(refd)***

Norwich Pharmacal Co v. Customs And Excise Comrs [1973] 2 All ER 948 ***(refd)***

Phoenix Biqq Sdn Bhd v. Yam Kong Wah & Anor [2022] CLJU 1796; [2022] 1 LNS 1796 HC ***(refd)***

Protasco Bhd v. Tey Por Yee & Anor And Other Appeals [2021] 9 CLJ 349 FC ***(refd)*** A
Selvamary P Satianathan v. G Rethinasamy [1991] 1 CLJ 266; [1991] 1 CLJ (Rep) 412 SC ***(refd)***
The State Government Of Sarawak & Ors v. Teo Soo Chuan [2014] 5 CLJ 68 CA ***(refd)***

Legislation referred to:
Bankers' Books (Evidence) Act 1949, ss. 2, 6, 7 B
Rules of Court 2012, O. 24 rr. 7A(2), 8

For the plaintiff - Lim Chee Wee & Nathalie Ker Si Min; M/s Lim Chee Wee Partnership)
For the 4th, 7th, 8th, 9th, 11th, 17th, 22nd, 24th & 25th defendants - Syamsul Azhar & Sasha Nameera Sabtu; M/s Azhar Aziz & Assocs

Reported by Lina E C

JUDGMENT

Atan Mustaffa Yussof Ahmad J:

[1] This is an application by the plaintiff, Bank Pembangunan Malaysia Berhad, for discovery orders against Malayan Banking Berhad ("Maybank") and Maybank Islamic Berhad ("Maybank Islamic") to obtain banking records of the fourth defendant, Roslina binti Ibrahim ("Roslina"), the 24th defendant, BVS Trinity Sdn Bhd ("BVS Trinity") and the 25th defendant, VCB Malaysia Bhd ("VCB Malaysia") in relation to alleged fraudulent disbursements of a RM400 million loan. D E

Background Facts

[2] On 23 May 2012, the plaintiff issued a letter of offer to Aries Telecoms (M) Berhad ("Aries") for a term loan facility ("loan") of RM400,000,000 ("loan sum"). The purpose of the loan was to finance partly the development of a coastal network consisting of installing a fibre optic network around Peninsular Malaysia ("project"). F

[3] On 28 June 2012, the plaintiff and Aries entered a facility agreement. The loan was initially supported by the appointment of Huawei Technologies Co Ltd, China ("Huawei China") as the turnkey contractor to build, operate and maintain the network for the project. G

[4] The loan sum was disbursed to Aries in two tranches: the first tranche of RM200,000,000 on 2 July 2012 and the second tranche of RM200,000,000 on 15 November 2013. The disbursements were approved by the late Dato' Mohd Zafer Mohd Hashim ("Dato' Zafer"), who was the President and Group Managing Director of the plaintiff at the material time. H

[5] On 10 July 2018, the plaintiff issued a notice to Aries declaring default and demanding repayment of RM451,266,763.13. On 9 May 2019, summary judgment was entered against Aries for the sum demanded in a separate suit. Aries appealed to the Court of Appeal and obtained a stay of execution on 31 May 2019, subject to the plaintiff's right to appoint a receiver and manager under the debenture. I

[6] On 4 July 2019, the plaintiff appointed Mr Lim Keng Peo of Deloitte Corporate Solutions Sdn Bhd as the receiver and manager ("R&M") over the assets and undertakings of Aries. On 24 September 2020, upon investigation by the R&M based on available documents and public information, certain irregularities were discovered in relation to the loan.

[7] In January 2022, the plaintiff discovered through the 13th defendant, Ranjeet Singh Sidhu ("Ranjeet"), who was acting on behalf of Aries at the material time, that sometime before 4 July 2012, Ranjeet had made payment of approximately RM8,000,000 to Dato' Zafer through the 14th defendant, Noorusa'adah binti Othman ("Adah") as intermediary, for the successful disbursements of the loan to Aries.

[8] On 15 June 2022, the plaintiff filed this suit against the defendants in this action including Roslina (the fourth defendant), the seventh to the ninth defendants, the 11th, 17th and 22nd defendants, BVS Trinity (the 24th defendant) and VCM Malaysia (the 25th defendant) ("the said defendants"). The R&M found that there were payments made by Aries to Roslina, BVS Trinity and VCB Malaysia which were not supported by relevant information or documents.

[9] On 4 July 2022, the plaintiff obtained an *ex parte Mareva* injunction against the said defendants *via* a notice of application in encl. 2 which was subsequently amended and filed as encl. 106 ("*Mareva* application"). The *Mareva* application was then heard *inter partes* and was ultimately dismissed by this court on 19 June 2024.

[10] In connection with the *Mareva* application proceedings, the said defendants had provided letters of undertaking dated 15 July 2022 and 8 August 2022 respectively whereby the said defendants' assets including their bank accounts were subject to restrictions pending the disposal of the *Mareva* application. Under the terms of these letters of undertaking, the plaintiff had agreed that disclosure of banking information (including details of withdrawals from bank accounts retrospectively from 8 July 2022 for most defendants and 1 August 2022 for the seventh to ninth defendants) would only be required if the *inter partes Mareva* application was allowed by the court. Since the *Mareva* application was dismissed, the plaintiff had previously agreed that no further immediate disclosures of assets including bank statements would be required from the respective defendants.

[11] Roslina was formerly a director of Aries until her resignation on 15 May 2018. She is a director and 60% shareholder of BVS Trinity, a director of VCB Malaysia and the 22nd defendant, Orient Telecoms Sdn Bhd, and was also a former director of the 17th defendant, VCB Investment Berhad, Aries, the 18th defendant, Open Fibre Sdn Bhd and the 26th defendant, Zavarco Plc.

[12] On 17 June 2024, the plaintiff filed encl. 714, subsequently amended as encl. 730, seeking discovery of banking records from Maybank and Maybank Islamic regarding the accounts of Roslina (Maybank Islamic account No. 564098801373), BVS Trinity (Maybank account No. 512307106781) and VCB Malaysia (Maybank account No. 512307402565), for the purpose of tracing the disbursed loan sum.

The Application In Encl. 730

[13] In encl. 730 ("application") the plaintiff seeks discovery orders made under O. 24 r. 7A of the Rules of Court 2012 ("ROC") and/or s. 7 of the Bankers' Books (Evidence) Act 1949 ("BBEA") against Maybank and Maybank Islamic requiring them to file and serve an affidavit within 14 days specifying and verifying documents related to bank accounts of Roslina, BVS Trinity, and VCB Malaysia. The scope of documents sought is comprehensively detailed in Schedule A, which forms an integral part of the discovery application. Schedule A, titled "List of Maybank Documents", sets out specific categories of banking records requested for three distinct groups of accounts: (i) Roslina's Maybank Islamic account No. 564098801373 and any other accounts held in her name or beneficially owned by her; (ii) BVS Trinity's Maybank accounts; and (iii) VCB Malaysia's Maybank accounts.

[14] The temporal scope of Schedule A covers the period from 2 July 2012 (being the date when the first tranche of the loan was disbursed) to the date of the court order sought ("the order"). For each category of accounts, Schedule A specifies seven types of documents to be produced: (i) account opening/closing forms and related documentation; (ii) all documents disclosing the identities of authorised signatories; (iii) all cheques drawn and cheque images; (iv) all bank statements; (v) all debit vouchers, fund transfer applications, GIRO payments, RENTAS, telegraphic transfers, orders, internal memoranda and other related transaction documents; (vi) all documents relating to Banking Products (including ATM cards, credit cards, debit cards, banking facilities, online banking facilities, mobile application facilities and other banking products) and the individuals authorised to use them; and (vii) all documents relating to the use and transactions involving these banking products.

[15] The prayers include producing copies of all documents listed in Schedule A, allowing extensions of time by mutual agreement, costs to be borne by the plaintiff but recoverable as damages against the defendants in this action, and leave to rely on the discovered documents in this suit and other proceedings (whether in Malaysia or elsewhere) for the purposes of tracing monies.

[16] The grounds are that the plaintiff discovered irregularities through its R&M's investigation, found unjustified payments made by Aries to Roslina, BVS Trinity and VCB Malaysia which were not supported by relevant

documentation. The application aims to trace the RM400 million loan disbursements, based on evidence suggesting monies from the loan sum may have been paid into Roslina's Maybank Islamic account, BVS Trinity's Maybank account, and VCB Malaysia's Maybank account. The plaintiff argues that there is a real prospect that the information will help locate and preserve assets subject to its proprietary claim.

[17] The application is made under both O. 24 r. 7A of ROC and s. 7 of the BBEA which constitute complementary statutory frameworks for obtaining banking documents from third parties. Order 24 r. 7A establishes the comprehensive procedural framework for third-party discovery applications, setting out essential conditions including proper service requirements, supporting affidavit obligations, relevance tests linking documents to issues in proceedings, and judicial discretion based on necessity to fairly dispose of suits or save costs.

[18] Section 7 of the BBEA provides a parallel statutory pathway designed specifically for banking records, empowering courts to order inspection and copying of entries in "banker's books" for legal proceedings. It provides:

> (1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings.
>
> (2) An order under this section may be made either on or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed unless the Court or Judge otherwise directs.

Parties' Positions

[19] The plaintiff seeks discovery orders against Maybank and Maybank Islamic for banking records of Roslina, BVS Trinity, and VCB Malaysia to trace allegedly fraudulent disbursements of a RM400 million loan, arguing these records are necessary to locate and preserve assets subject to its proprietary claim.

[20] The said defendants oppose the application on four grounds: that it is filed too late (two years after proceedings began), that it violates existing letters of undertaking from the *Mareva* injunction, that it relies on unreliable R&M evidence and constitutes a fishing expedition for post-disbursement transactions to find new defendants.

[21] Maybank and Maybank Islamic have not appeared or taken any position on the application.

Analysis And Findings Of The Court

Temporal Impossibility Of Payments Originating From Loan Funds

[22] The defendants contend that bank statements demonstrate that the entire loan amount of RM400 million had been exhausted from Aries' account by 18 November 2013. Consequently, they argue it is temporally impossible for any payments made to Roslina, BVS Trinity and VCB Malaysia between 2016 and 2018 to have originated from the loan funds, rendering this application futile. The said defendants assert that since the loan sum disbursement had ended by November 2013, and the payments to Roslina, BVS Trinity and VCB Malaysia occurred years later, there can be no nexus between the loan funds and these later payments.

[23] The plaintiff maintains that while the loan was disbursed to Aries in two tranches in July 2012 and November 2013, Aries had unlawfully paid out funds from the loan sum to Roslina, BVS Trinity and VCB Malaysia after receiving the loan, under the pretence that these payments were intended for construction of the project. The plaintiff contends that the discovery is necessary to trace the flow of funds and identify recipients, regardless of when the payments were made. The plaintiff relies on evidence from the R&M's investigations, which revealed suspicious and unjustified payments to Roslina, BVS Trinity and VCB Malaysia, supported by payment vouchers, cheque images and other banking documents.

[24] Having considered the submissions, I find the said defendants' temporal impossibility argument unpersuasive. The fact that the loan funds left Aries' account by November 2013 does not preclude the possibility that these funds were subsequently channeled through various entities before reaching Roslina, BVS Trinity and VCB Malaysia in 2016-2018.

[25] The English Court of Appeal in *Bankers Trust Co v. Shapira* [1980] 3 All ER 353 established the principle that discovery should be permitted against third parties where there is a *prima facie* case of fraud and the discovery would lead to the location or preservation of assets subject to proprietary claims. Lord Denning MR held:

> This new jurisdiction must, of course, be carefully exercised. It is a strong thing to order a bank to disclose the state of its customer's account and the documents and correspondence relating to it. It should only be done when there is a good ground for thinking the money in the bank is the plaintiff's money, as for instance when the customer has got the money by fraud, or other wrongdoing, and paid it into his account at the bank.

[26] His Lordship further stated:

> The customer, who has *prima facie* been guilty of fraud, cannot bolt the door against him. Owing to his fraud, he is disentitled from relying on the confidential relationship between him and the bank ... So the court, in order to give effect to equity, will be prepared in a proper case to make an order on the bank for their discovery.

[27] The evidence before this court, including the R&M's findings of unjustified payments and suspicious transactions involving the said defendants, establishes sufficient grounds for allowing discovery to trace the movement of the loan funds, regardless of temporal gaps. The court finds that the R&M conducted investigations which revealed certain irregularities in relation to the loan, particularly payments made by Aries to Roslina, BVS Trinity and VCB Malaysia which were not supported by the relevant information and documentation. The evidence demonstrates specific instances of these unjustified payments: RM10,000 to Roslina, RM9,500,000 to BVS Trinity, and RM400,000 to VCB Malaysia, with the latter concealed through fictitious payment vouchers.

[28] Particularly concerning are R&M's findings regarding the practice of issuing payment vouchers to entities that are different from the actual recipients. The evidence shows that payments to BVS Trinity were documented as being to the 15th defendant, Paneagle Holdings Berhad ("Paneagle Holdings"), while payments to VCB Malaysia were recorded as being to Gelombang Biru Telco and Gentle Impact Sdn Bhd ("Gentle Impact"). These discrepancies suggest potential attempts to obscure the real destination of funds and raise serious questions about the true nature of these transactions. The court is satisfied that there is compelling evidence demonstrating that Roslina, BVS Trinity and VCB Malaysia had unlawfully received funds from the loan sum.

[29] The application serves the legitimate purpose of ascertaining whether the payments unlawfully received by Roslina, BVS Trinity and VCB Malaysia from the loan sum were withdrawn and transferred out of their respective bank accounts, and to trace and locate these monies. The court finds that strong evidence has been presented to establish a *prima facie* case of fraud against Roslina, BVS Trinity and VCB Malaysia, which is a prerequisite for such discovery orders under the bankers' trust principle.

[30] Regarding the temporal considerations, the court finds compelling evidence that Roslina, BVS Trinity and VCB Malaysia unlawfully received funds from the loan sum, notwithstanding that these payments were made between 2016 and 2018. The discovery sought appropriately covers the period from 2 July 2012 (when the first tranche of the loan was disbursed) to the date of the order, reflecting the need to trace funds from their origin regardless of when they ultimately reached Roslina, BVS Trinity and VCB Malaysia. This temporal scope is both reasonable and necessary given the complex nature of the alleged fraud.

[31] The said defendants' attempt to defeat discovery based purely on timing ignores the reality of how misappropriated funds may be layered through multiple transactions over time. The court rejects the said defendants' temporal impossibility argument, which asserted that since the

entire loan sum left Aries' bank account by 18 November 2013, any payments to Roslina, BVS Trinity and VCB Malaysia in 2016-2018 could not have originated from the loan. This argument fails to appreciate that sophisticated financial fraud often involves channelling funds through various entities and transactions before reaching their ultimate destination. The court finds that the reasoning advanced by the said defendants – that temporal gaps preclude any connection between the loan funds and later payments – fundamentally misunderstands how misappropriated funds may be layered through multiple transactions over extended periods.

[32] The discovery sought is designed to identify and determine where these monies have been subsequently transferred, withdrawn, or dissipated, which inherently requires following complex money trails that can span years and multiple entities. The legal framework established in *Bankers Trust Co v. Shapira* recognises the court's equitable jurisdiction to order discovery against third parties, including banks, to enable the tracing of fraudulently obtained funds. The case establishes that where there is very strong evidence to support a prima facie case of fraud, the court is entitled to order the fullest possible disclosure necessary for tracing purposes, including banking documents, correspondence, and transaction records. Lord Denning emphasised that discovery is "a very important part of the court's armoury" in enabling justice to be done and preventing fraudulent funds from disappearing before trial. This approach is both legally sound and practically necessary given the complexity of modern financial transactions and the urgency required to preserve assets that may otherwise be dissipated.

[33] The discovery sought is relevant and necessary to establish the complete chain of fund flows and determine whether Roslina, BVS Trinity and VCB Malaysia were ultimate recipients of the misappropriated loan funds through intermediate transactions. I am satisfied that the plaintiff has demonstrated a proper basis for the discovery notwithstanding the temporal gap between the loan disbursement and the payments to Roslina, BVS Trinity and VCB Malaysia.

Effect Of The Letters Of Undertaking On The Application

[34] The said defendants argue that the letters of undertaking dated 15 July 2022 and 8 August 2022 executed between the parties create an absolute bar to this application. The letters of undertaking provided specific restrictions on the assets of the defendants in question including their bank accounts and expenditures, with conditional disclosure obligations stating that they would file the disclosure of the information as ordered including details of such withdrawals from bank account retrospectively from 8 July 2022 and 1 August 2022 for the seventh to ninth defendants only "in the event that encl. 44 is decided in the plaintiff's favour and/or the plaintiff's encl. 2 is allowed." They contend that since these undertakings specifically provided for disclosure only if the *inter partes Mareva* injunction was granted in the

plaintiff's favour, and given that the *Mareva* application was ultimately dismissed, no disclosure should now be permitted. The said defendants further assert that having obtained the benefit of the undertakings through the compliance of the defendants in question with withdrawal restrictions, the plaintiff should be estopped from seeking disclosure through this application.

[35] The plaintiff maintains that the letters of undertaking were executed on a "strictly without admission of liability" and "without prejudice" basis, and merely addressed the specific context of disclosure under the *Mareva* application. The plaintiff contends that nothing in the undertakings expressly prohibits or limits its entitlement to seek discovery through separate applications. The plaintiff emphasises that the undertakings pertained solely to ancillary disclosure orders under the *Mareva* application and do not preclude discovery sought through other proper avenues.

[36] Having carefully considered the parties' submissions, I find that the letters of undertaking do not bar this application. The plaintiff consistently maintained that the letters of undertaking do not prevent it from filing this application, characterising the said defendants' contention to the contrary as wholly misconceived. The undertakings were specifically focused on disclosure obligations arising from the *Mareva* application proceedings, a position consistently advanced by the plaintiff.

[37] The plaintiff argued that the provision on disclosure in the letters of undertaking merely provides that the defendants in question would disclose the information sought by the plaintiff in the *Mareva* application in the event that the *inter partes Mareva* order is granted by this court. This interpretation is supported by the express terms of the undertakings, which state that disclosure would be required "in the event that encl. 44 is decided in the plaintiff's favour and/or the plaintiff's encl. 2 is allowed." These undertakings must be read in their proper context – they were negotiated to address the immediate disclosure requirements that would flow from the successful *Mareva* application, consistent with the plaintiff's submissions regarding their limited scope and specific context within the *Mareva* application proceedings.

[38] Nothing in their terms purports to comprehensively regulate all future discovery between the parties or to prohibit discovery sought through other procedural mechanisms. The plaintiff correctly argued that there is nothing in the provision on disclosure contained in the letters of undertaking, which prohibits or limits the plaintiff's entitlement to file this application, and nowhere in the letters of undertaking was the plaintiff expressly prohibited from seeking discovery against the defendants in question. The plaintiff further emphasised that there is no requirement to obtain a *Mareva* order before being entitled to file a discovery application, as the criteria for a discovery order differ from the requirements for obtaining a *Mareva* order.

The discovery now sought is materially different in nature and purpose from the asset disclosure contemplated under the *Mareva* application proceedings. This distinction is evident from the plaintiff's submissions highlighting that the evidence for the *Mareva* application concerned the flow of funds from Aries to Roslina, BVS Trinity and VCB Malaysia, while this application seeks to determine whether the monies unlawfully received by Roslina, BVS Trinity and VCB Malaysia were transferred out of their respective bank accounts – information which the plaintiff had not previously claimed to possess regarding funds flowing out of the accounts of Roslina, BVS Trinity and VCB Malaysia.

[39] While the said defendants argue that the plaintiff has obtained benefits under the undertakings through their compliance with withdrawal restrictions, this does not create an estoppel against seeking discovery through proper legal channels. The plaintiff addressed this estoppel argument by contending that the letters of undertaking were executed on a "strictly without admission of liability" and "without prejudice" basis, arguing that the issue of estoppel does not arise and that it remains at liberty to proceed with this application. The "without prejudice" nature and narrow scope of the undertakings demonstrate that they were not intended to create a comprehensive bar to new and different discovery applications pursued through distinct procedural mechanisms.

[40] The case of *CIMB Investment Bank Bhd v. Ernst & Young & Anor* [2020] CLJU 1286; [2020] 1 LNS 1286; [2020] MLJU 1450 is relied on by the said defendants to argue that the plaintiff is estopped from pursuing this application, contending that the plaintiff had previously confirmed during its *Mareva* application that it possessed all material information necessary to file the suit and obtain the injunction. Specifically, the said defendants invoked para. [62] of the CIMB decision, which held that "The SC is estopped from relitigating, by way of its proposed fresh discovery application, the same matter in respect of the discovery application in encl. 179 that has already been decided by the Federal Court. Enclosure 179, having been adjudged, creates an estoppel *per rem judicatum* and the SC is not permitted to relitigate the same matter in its proposed fresh discovery application."

[41] The said defendants argued that because the plaintiff had previously agreed that discovery would only be sought if the *Mareva* injunction was granted, and since the injunction was refused, the plaintiff is now attempting to "get a second bite of the cherry" by pursuing discovery through a separate application. However, this reliance is misplaced as the CIMB case involved a party attempting to relitigate the exact same discovery matter that had already been conclusively determined by the Federal Court, whereas here, there has been no prior adjudication of the specific discovery now sought against the third-party banks.

[42] Moreover, the "without prejudice" nature of the undertakings reinforces that they were not intended to create binding obligations beyond their specific *Mareva*-related context. The plaintiff remains entitled to pursue discovery through appropriate applications under O. 24 r. 7A of the ROC and/or s. 7 of the BBEA, notwithstanding the existence of the undertakings.

Probative Value Of The R&M's Findings

[43] The said defendants challenge the probative value of the R&M's findings, characterising them as one-sided assertions made without proper verification. They emphasise that the R&M did not contact or seek verification from Aries' directors or auditors regarding the legitimacy of the payments before making allegations of impropriety. The said defendants rely heavily on this court's previous observations in dismissing the *Mareva* application, where the R&M's failure to investigate further by requesting supporting documents or clarification from those directly involved was noted as undermining the reliability of the allegations.

[44] The plaintiff contends that the R&M's findings are supported by substantial documentary evidence, including payment vouchers, cheque images, bank statements and other banking documents that demonstrate suspicious and unjustified payments to Roslina, BVS Trinity and VCB Malaysia. The plaintiff argues that these documentary findings provide sufficient basis for discovery, particularly when viewed alongside other evidence of fraud against the said defendants. The plaintiff emphasises that this court has already determined in dismissing the striking out applications that there is a reasonable cause of action against the said defendants.

[45] This court finds that while the R&M's investigative methodology may have had limitations, particularly in not seeking verification directly from Aries' directors or auditors, this does not negate the substantial value of the documentary evidence uncovered through the investigations. The R&M has identified specific transactions supported by concrete documentary evidence that raises serious questions about the propriety of fund movements. For Roslina, the evidence includes a specific RM10,000 cash cheque payment made on 30 October 2018, which was found to be unjustified and not backed by any supporting documents, with cheque images providing concrete proof of the transaction to her Maybank Islamic account. For BVS Trinity, the R&M identified payments totalling RM9,500,000 that were unjustified and not backed by supporting documents, including eight payment vouchers dated 29 January 2016 with corresponding cheque images evidencing RM9 million in payments, as well as an additional payment voucher for RM500,000 along with the cheque issued in favour of BVS Trinity and entries in Aries' creditors ledger.

[46] For VCB Malaysia, the investigation revealed a RM400,000 payment that was disguised through fictitious vouchers made out to other entities (Gelombang Biru Telco and Gentle Impact) when the actual payment was

made to VCB Malaysia, supported by deposit slips showing payment to VCB Malaysia, Aries's Maybank bank statements, and Aries' creditor ledger dated 31 May 2018. These are not mere assertions or speculative claims but findings grounded in tangible banking records, corporate documents, cheque images, bank statements, payment vouchers, and supporting financial documentation that create a compelling documentary trail of suspicious transactions.

[47] While verification with Aries' directors might have provided additional context regarding the business justification for these payments, the absence of such verification does not invalidate the substantial documentary trail of suspicious transactions that has been established. The legal framework established in *Bankers Trust Co v. Shapira* recognises the court's jurisdiction to order discovery where there is very strong evidence to support a *prima facie* case of fraud and good grounds for thinking the money belongs to the plaintiff. The case emphasises that such orders should only be made when there is sufficient evidence to justify overriding banking confidentiality, requiring the fullest possible disclosure to enable effective tracing of funds. The documented pattern of transactions and their suspicious nature provide the evidentiary foundation necessary to meet this threshold for discovery purposes.

[48] The threshold established in *Bankers Trust Co v. Shapira* has been satisfied through the combination of comprehensive documentary evidence identified by the R&M and other corroborating evidence before this court, including admissions by other defendants regarding fraudulent acts related to the loan sum. The case requires very strong evidence to support a *prima facie* case of fraud and good grounds for thinking the money belongs to the plaintiff, standards that are met here through the documented patterns of payments lacking proper supporting documentation and apparent business justification. Such documentary evidence demonstrating suspicious transaction patterns provides sufficient grounds to justify ordering discovery without requiring direct testimonial verification from company directors, particularly where the documentary trail reveals transfers that appear to lack legitimate commercial purpose and proper authorisation.

[49] Moreover, the very purpose of the discovery sought in this application is to enable a more complete and thorough investigation of these transactions to ascertain the details of transfers, trace the movement of monies, and locate assets that may be subject to the plaintiff's proprietary claims. The said defendants' criticism of the R&M's methodology, while potentially relevant to the ultimate assessment and weight of the evidence at trial, does not present a proper legal basis for refusing discovery that is specifically designed to illuminate the true nature and destination of these transactions. This application is expressly aimed at obtaining information to ascertain whether payments unlawfully received by Roslina, BVS Trinity and VCB Malaysia

from the loan sum were subsequently withdrawn or transferred, to ascertain the details of such transfers, and to trace and locate these monies for potential recovery.

[50] The documentary findings of the R&M, even if requiring further investigation and clarification through the proposed discovery process, provide sufficient evidentiary foundation for the discovery sought and demonstrates that the documents requested are both relevant and necessary for the fair disposal of these proceedings. The court finds that the existing evidence establishes adequate grounds to justify compelling disclosure of banking records that may reveal the ultimate disposition of funds and assist in tracing assets, regardless of any methodological limitations in the R&M's initial investigation.

Legitimacy Of Payments Received By Roslina, BVS Trinity And VCB Malaysia

[51] The said defendants maintain that the payments they received from Aries were legitimate business transactions properly recorded in Aries' audited financial statements. They argue that this formal documentation and accounting of the transactions in audited statements negates any suggestion of fraudulent conduct. The said defendants contend that the mere recording of these transactions in official financial records demonstrates their propriety.

[52] The plaintiff counters by pointing to specific irregularities identified by the R&M's investigations, including payments to BVS Trinity of RM9.5 million where payment vouchers were made out to different entities, payments of RM400,000 to VCB Malaysia disguised through payment vouchers to Gelombang Biru Telco and Gentle Impact, and unjustified payments of RM10,000 to Roslina without supporting documentation. The plaintiff argues that the formal recording of transactions does not legitimise their underlying nature if fraudulent.

[53] I find the said defendants' reliance on the mere fact of recording in audited financial statements insufficient to defeat this application. The fundamental premise underlying the application demonstrates that the purpose is to ascertain whether payments unlawfully received by Roslina, BVS Trinity and VCB Malaysia from the loan sum were withdrawn and transferred, to determine the details of such transfers, and to trace and locate these monies. This inherently recognises that the mere receipt or formal recording of payments cannot be sufficient to establish their legitimacy or determine the ultimate destination of funds. While proper accounting records may provide a veneer of legitimacy, they do not preclude the possibility of underlying impropriety in the transactions themselves.

[54] The English Court of Appeal in *Bankers Trust Co v. Shapira* established the fundamental principle that comprehensive discovery is essential for effective asset tracing in fraud cases. Lord Denning MR stated that "in order

to enable justice to be done, in order to enable these funds to be traced, it is a very important part of the court's armoury to be able to order discovery." His Lordship further held that "The plaintiff, who has been defrauded, has a right in equity to follow the money. He is entitled, in Atkin LJ's words, to lift the latch of the bankers' door ... The customer, who has *prima facie* been guilty of fraud, cannot bolt the door against him. Owing to his fraud, he is disentitled from relying on the confidential relationship between him and the bank ... If the plaintiff's equity is to be of any avail, he must be given access to the bank's books and documents, for that is the only way of tracing the money or of knowing what has happened to it." This principle establishes that where very strong evidence to support a *prima facie* case of fraud exists, a defrauded party's equitable right to trace funds overrides banking confidentiality, requiring the fullest possible disclosure of banking records to enable effective tracing, regardless of whether transactions appear in formal documentation or audited financial statements.

[55] Here, the R&M's findings raise serious questions about the true nature of these payments, particularly through the identification of systematic irregularities including discrepancies in information, missing documents, and inconsistencies in reports and payments. The practice of issuing payment vouchers to entities different from the actual recipients suggests deliberate attempts to obscure the real destination of funds. The evidence reveals a pattern of concealment: payments totalling RM9 million to BVS Trinity were documented through nine payment vouchers purportedly made to Paneagle Holdings, with no supporting documents attached to these vouchers. Upon reviewing bank statements and cheque images, these payments were discovered to have been actually made to BVS Trinity. Additionally, a payment voucher for RM500,000 was raised for Zeta Resources Sdn Bhd ("Zeta Resources"), but the payment was in fact made to BVS Trinity, with the voucher appearing to have been issued to conceal the transfer of funds.

[56] Similarly, payment vouchers for RM400,000 were raised to Gelombang Biru Telco and Gentle Impact, purportedly Aries' creditors, but the payment was discovered to have been in fact made to VCB Malaysia, a wholly owned subsidiary of BVS Trinity. This fictitious payment voucher was issued to conceal the siphoning of funds from Aries to VCB Malaysia and/or BVS Trinity. Further irregularities include an unjustified cash cheque payment of RM10,000 to Roslina that was not backed by any supporting documents. These systematic discrepancies between payment documentation and actual recipients, consistently involving the concealment of fund flows to the same entities, raise rather than dispel concerns about the legitimacy of these transactions. The formal recording of these payments in financial statements may simply reflect the paper trail created to disguise the true nature of the transfers, rather than establishing their propriety.

[57] This is precisely the type of situation where discovery is warranted to penetrate beyond the formal documentation and understand the true nature of the fund flows. The evidence demonstrates that substantial evidence exists showing that funds from the loan sum were transferred to Roslina, BVS Trinity and VCB Malaysia through these concealed mechanisms, yet the existing documentation fails to reveal the complete picture of how these monies were channelled and accessed. Discovery may be necessary where there are grounds to question the legitimacy of formally documented transactions, particularly where there is a real prospect that the information sought might lead to the location or preservation of assets to which the plaintiff is making a proprietary claim. In *Arab Monetary Fund v. Hashim & Ors (No. 5)* [1992] 2 All ER 911 the English High Court established that discovery should be granted where there is "a real prospect that the information sought might lead to the location or preservation of assets to which the plaintiff is making a proprietary claim."

[58] The documents sought are relevant and necessary for the fair disposal of these proceedings, as they would enable the identification of recipients of the loan sum ahead of trial and potentially reveal other wrongdoers who should be added to the proceedings. The apparent discrepancies between payment documentation and actual recipients, combined with the systematic lack of supporting business documentation for substantial payments and the deliberate concealment of the true destinations of funds, provide sufficient basis for allowing discovery notwithstanding the formal recording of these transactions in audited statements. The comprehensive nature of modern banking means that effective asset tracing requires access to all potential channels through which funds might have been transferred or accessed, beyond the superficial records that have been formally documented.

Discovery To Identify Additional Wrongdoers

[59] The said defendants contend that the plaintiff's stated need for discovery to identify additional wrongdoers lacks credibility, given that the R&M had already identified several parties including Zeta Resources, Gelombang Biru Telco, and Gentle Impact, which the plaintiff chose not to join as defendants. They argue that this selective approach in naming defendants undermines any claimed necessity for discovery to identify additional parties. The said defendants characterise this aspect of the application as an impermissible fishing expedition.

[60] The plaintiff maintains that discovery is necessary not just to identify potential additional wrongdoers, but primarily to trace and locate the flow of funds from the loan sum and to establish the complete chain of transactions. The plaintiff argues that the discovery would serve multiple legitimate purposes, including asset tracing and preservation, with the identification of additional wrongdoers being just one potential outcome rather than the primary purpose of this application.

[61] The court finds the said defendants' argument on this point fundamentally unpersuasive. The central premise that the plaintiff's failure to join certain parties previously identified by the R&M defeats the legitimacy of this present discovery application lacks legal foundation. This contention fundamentally misunderstands the well-established principle that a plaintiff enjoys absolute discretion in selecting defendants and cannot be compelled to pursue parties it chooses not to sue.

[62] The Supreme Court's decision in *Selvamary P Satianathan v. G Rethinasamy* [1991] 1 CLJ 266; [1991] 1 CLJ (Rep) 412; [1991] 1 MLJ 156 per Hashim Yeop A Sani CJ (Malaya) establishes the fundamental principle that "Generally at common law a plaintiff is entitled to pursue his remedy against a defendant. He cannot be compelled to proceed against other persons whom he has no desire to sue. *Prima facie*, the plaintiff is entitled to choose the person against whom to proceed and to leave out persons against whom he does not wish to proceed." This principle operates as an absolute bar to the said defendants' contention that the plaintiff's selective approach in naming defendants undermines any claimed necessity for discovery.

[63] The court rejects the characterisation that this selectivity creates any procedural impropriety or evidential deficiency. The plaintiff's strategic decision not to join entities such as Zeta Resources, Gelombang Biru Telco, and Gentle Impact, despite their identification by the R&M, represents a legitimate exercise of prosecutorial discretion. Such decisions are entirely within the plaintiff's prerogative and cannot be used to defeat subsequent applications for discovery that serve the legitimate purpose of understanding fund flows relevant to claims against the chosen defendants.

[64] The said defendants' attempt to argue that the plaintiff's treatment of Ranjeet (the 13th defendant) and the terms of the consent judgment should somehow restrict or undermine the plaintiff's entitlement to seek discovery against them represents a fundamental misdirection. The question of whether discovery applications were filed against Ranjeet, the circumstances surrounding his involvement as a defendant, or the terms upon which his matter was resolved through the consent judgment bears no relevance whatsoever to the plaintiff's separate and independent entitlement to seek discovery against other parties in these proceedings. This argument constitutes an irrelevant consideration that cannot impact the assessment of the present discovery application.

[65] The court finds that the said defendants' characterisation of this application solely aimed at identifying new defendants fundamentally mischaracterises their broader and legitimate purpose. This mischaracterisation ignores the primary objectives that justify this application and creates a false dichotomy that does not reflect the true nature of discovery in complex fraud cases.

[66] This application serves multiple legitimate purposes that extend far beyond the mere identification of additional defendants. The primary purpose is to ascertain whether payments unlawfully received by Roslina, BVS Trinity and VCB Malaysia from the loan sum were subsequently withdrawn or transferred out of their respective bank accounts, to ascertain the precise details of such transfers, and to trace and locate the ultimate destination of these funds. These objectives represent core requirements for establishing the complete factual matrix necessary for the fair disposal of the proceedings and the full determination of the plaintiff's pleaded case against the existing defendants.

[67] The discovery is fundamentally aimed at enabling the plaintiff to trace and locate the fund flow of the loan sum which was allegedly unlawfully received by Roslina, BVS Trinity and VCB Malaysia. This tracing function serves multiple legitimate purposes: it assists in establishing the chain of transactions that connect the loan disbursement to the receipt of funds by Roslina, BVS Trinity and VCB Malaysia; it provides evidence relevant to the assessment of remedies including potential asset recovery; and it enables the court to understand the complete scope of the alleged misappropriation scheme.

[68] While the discovery may incidentally lead to the identification of additional wrongdoers, this represents a potential secondary benefit rather than the primary purpose that could invalidate the application. The Court of Appeal's decision in *The State Government Of Sarawak & Ors v. Teo Soo Chuan* [2014] 5 CLJ 68; [2014] 4 MLJ 114 confirms that a plaintiff is entitled to pursue its chosen cause of action and seek evidence in support thereof. The principle established in that case – that a plaintiff is "entitled to a decision on the case he puts before the court, and not on what he could have put" – reinforces the plaintiff's right to define the scope of its case and seek discovery relevant to that defined scope.

[69] The fact that such a discovery might enable the plaintiff to identify recipients of the loan sum ahead of trial, potentially saving time and costs by facilitating the addition of other wrongdoers before commencement of trial, represents an advantageous efficiency rather than an improper objective. This efficiency serves the interests of judicial economy and does not transform an otherwise legitimate discovery application into an improper fishing expedition.

[70] The court notes that here, there exists a real prospect that the information sought may lead to the location or preservation of assets to which the plaintiff asserts proprietary claims, satisfying the Arab Monetary Fund test of real prospect for asset location and preservation. This asset preservation function represents a wholly legitimate purpose that exists independently of any potential identification of additional parties. The

discovery sought is both relevant and necessary for the fair disposal of these proceedings, providing essential information for the full determination of the plaintiff's pleaded case against the said defendants and their corresponding defences.

[71] The court finds that this application is fundamentally concerned with understanding and tracing fund flows, which goes directly to the heart of the plaintiff's claims against the existing defendants. This core function represents the essential factual foundation required for the proper adjudication of the claims and defences in these proceedings.

[72] The legitimate purpose of fund tracing is not negated by the possibility that such discovery might also reveal additional information about the transactions under investigation. The English Court of Appeal in *Bankers Trust Co v. Shapira* established that comprehensive discovery may be necessary to trace assets effectively, emphasising that "unless there was the fullest possible disclosure the fund could not be traced." The case recognises that effective asset tracing requires access to complete banking records and correspondence to understand where money has gone and what has happened to it. This principle reflects the practical reality that effective tracing often requires comprehensive disclosure of transaction details.

[73] The application of the bankers trust principle requires very strong evidence to support a *prima facie* case of fraud and good grounds for thinking the money belongs to the plaintiff. The case established a specific framework for ordering discovery against third parties who are not defendants, building upon *Norwich Pharmacal* principles (see *Norwich Pharmacal Co v. Customs and Excise Comrs* [1973] 2 All ER at 948). Lord Denning emphasised that such orders should only be made "when there is a good ground for thinking the money in the bank is the plaintiff's money," and that banks who become innocently mixed up in fraudulent acts "come under a duty to assist" by providing full information.

[74] The court rejects the proposition that the plaintiff's apparent selectivity in naming defendants based on previously available information precludes it from seeking discovery that might reveal new and relevant information about the movement of the loan funds. This argument conflates two distinct concepts: the plaintiff's right to choose its defendants, and its entitlement to seek discovery relevant to its claims against those chosen defendants. The former right does not constrain the latter entitlement.

[75] The sophistication of modern banking systems means that funds can be accessed and transferred through multiple channels and instruments, extending far beyond simple account-to-account transfers. Understanding the complete picture of fund movements requires comprehensive disclosure that may encompass various banking products, facilities, and transaction

methods. The discovery sought here is specifically designed to capture this complexity while remaining bounded by clear temporal and categorical parameters as set out in Schedule A of this application.

[76] The court concludes that this application serves wholly legitimate purposes directly relevant to the plaintiff's pleaded case. The fact that such a discovery might incidentally reveal information about additional parties cannot delegitimise applications that are otherwise properly founded and necessary for the fair disposal of the proceedings. The application represents a measured and appropriate response to the complexity of the alleged fraud and the sophisticated nature of modern financial transactions through which the alleged misappropriation was conducted.

Propriety Of This Application

[77] The said defendants characterise this application as procedurally improper, arguing it represents an attempt to repair and improve the plaintiff's case after various unsuccessful applications, particularly the failed *Mareva* application. They contend this is effectively a backdoor attempt to achieve what the plaintiff could not secure through previous applications, and that such attempts to bolster the case should not be permitted at this stage.

[78] The plaintiff maintains that these is a properly constituted discovery application brought under O. 24 r. 7A of the ROC and/or s. 7 of the BBEA. The plaintiff argues that the application serves distinct purposes from the *Mareva* injunction and has been filed approximately one year before trial to facilitate the efficient conduct of proceedings.

[79] I find no merit in the said defendants' characterisation of this application as improper. The said defendants' contention that this application should be dismissed because it is "akin to pre-action discovery" is wholly misconceived. Order 24 r. 7A(2) of the ROC expressly allows for applications for third-party discovery to be made after the commencement of proceedings, without imposing any limitations based on the timing of the suit. The application has been duly served on the relevant parties in accordance with the procedural requirements. Furthermore, there is no issue of delay on the part of the plaintiff, as this application was filed approximately one year before the trial dates fixed by this court. The evidence before me establishes that this application is made *bona fide* and in accordance with proper legal procedure.

[80] The discovery now sought serves materially different purposes from the asset preservation aims of the *Mareva* application. The court notes that the *Mareva* application pertained specifically to the flow of funds from Aries to the said defendants with the objective of obtaining a *Mareva* order against the said defendants' bank accounts. In contrast, this application aims to ascertain

if the payments unlawfully received by Roslina, BVS Trinity and VCB Malaysia from the loan sum were withdrawn and/or transferred by these defendants out of their respective bank accounts, and to ascertain the details of such transfers, with the ultimate objective of tracing and locating these monies. Significantly, the plaintiff has neither claimed nor stated that it possesses evidence of funds flowing out of the bank accounts of Roslina, BVS Trinity and VCB Malaysia in the *Mareva* application, indicating a distinct and separate purpose for the current discovery. There is no requirement for the plaintiff to obtain a *Mareva* order before being entitled to file a discovery application, as the relevant criteria for discovery orders differ fundamentally from the requirements for obtaining a *Mareva* order.

[81] As established in the High Court decision of *Billion Prima Sdn Bhd & Anor v. Nutech Company Ltd & Anor* [2017] 1 CLJ 179, discovery applications against third parties under O. 24 r. 7A serve several pragmatic purposes, including facilitating trial preparation and avoiding unnecessary procedural complications during trial. The court in *Billion Prima* articulated that the documents disclosed by a third party "shall be made available to all parties before the commencement of trial. In such a manner, parties' preparation for trial is facilitated and the trial may then be disposed of expeditiously," whilst also avoiding the necessity for subpoenas during trial proceedings. The timing of this application, approximately one year before trial, aligns with the rationale articulated in *Billion Prima* of ensuring documents are available to all parties before trial commencement and enabling expeditious disposal of the matter.

[82] Moreover, O. 24 r. 7A(2) explicitly contemplates discovery applications being made after the commencement of proceedings. The rule imposes no temporal restrictions beyond requiring proper service on the relevant parties, which has been satisfied in this case. The fact that this application follows unsuccessful attempts at other forms of relief does not render them improper – they represent the pursuit of a distinct procedural remedy with its own legal basis and requirements. The court finds that there are no authorities indicating that the filing of a *Mareva* application bars an applicant from subsequently filing a discovery application. The plaintiff is entitled to seek a discovery order as long as it meets the relevant criteria for such an order, which differ from the requirements for obtaining a *Mareva* order, highlighting the distinct legal basis and requirements of discovery.

[83] The said defendants' suggestion that this application is an attempt to "repair" the plaintiff's case misunderstands the nature of discovery in civil proceedings. Discovery is an integral part of trial preparation, not a sign of deficiency in the underlying case. The critical question is whether the discovery sought is necessary for the fair disposal of the matter or for saving costs, as required by O. 24 r. 8 of the ROC 2012. The fact that the plaintiff

has previously sought different forms of relief, which does not preclude it from utilising proper discovery procedures to prepare its case for trial, provided the discovery sought meets the necessary legal requirements.

[84] The critical question is whether the discovery sought is necessary for the fair disposal of the matter or for saving costs, as required by O. 24 r. 8 ROC. The court finds that the documents and information sought are relevant and necessary for the fair disposal of these proceedings. Given the complexity of the alleged fraud and the need to trace fund flows through various accounts and entities, the discovery sought appears both relevant and necessary for the proper preparation and conduct of the trial. The purpose is to ascertain if payments unlawfully received were withdrawn and/or transferred, to ascertain the details of such transfers, and ultimately to trace and locate the fund flow of the loan sum which was unlawfully received. The information sought is crucial for the full determination of the plaintiff's pleaded case against the said defendants and goes to the very heart of the plaintiff's claim. The discovery will also assist in identifying the recipients of the loan sum ahead of trial, thereby saving time and costs by potentially identifying other wrongdoers. This legitimate purpose exists independently of any previous applications made by the plaintiff, as the *Mareva* application and this application serve distinct purposes with materially different objectives and legal requirements.

Scope Of Documents Sought In Discovery

[85] The said defendants object to the breadth of documents sought in the discovery applications, particularly the requests for details of ATM cards, banking facilities, and other banking products. They contend that these requests extend beyond what is necessary for tracing loan funds and amount to an impermissible fishing expedition. The said defendants argue that such wide-ranging disclosure cannot be justified by the plaintiff's stated aims.

[86] The plaintiff maintains that the documents sought have been specifically detailed in Schedule A of this application, with clear categorisation and temporal parameters. The plaintiff argues that the comprehensive nature of the requests is necessary to trace the movement of funds and understand the complete picture of how the loan monies were channelled through various accounts and financial instruments.

[87] I find that the scope of documents sought is both appropriate and necessary given the nature of the alleged fraud and the sophistication of modern banking transactions. The court recognises that this application is fundamentally aimed at ascertaining whether payments unlawfully received by the defendants from the loan sum were withdrawn or transferred out of their respective bank accounts, and to ascertain the details of such transfers for the purpose of tracing and locating these monies. This objective directly supports the finding on appropriateness and necessity, as the application serves the legitimate purpose of asset tracing and fair disposal of the suit.

[88] The documents requested in Schedule A are not undefined or speculative, but rather comprise specific categories of banking records that could reasonably be expected to illuminate the movement of funds. The court notes that Schedule A explicitly details comprehensive categories of documents including account opening and closing forms, documents identifying authorised signatories, cheques drawn and cheque images, bank statements, debit vouchers, fund transfer applications, GIRO payments, RENTAS, telegraphic transfers, orders, internal memoranda, and documents related to modern banking products such as ATM cards, credit cards, debit cards, online banking facilities, and mobile application facilities. This detailed categorisation effectively refutes any contention that the application lacks specifics or particularisation, as Schedule A provides sufficient detail for an objective assessment of the documents sought.

[89] The Federal Court in *Protasco Bhd v. Tey Por Yee & Anor And Other Appeals* [2021] 9 CLJ 349; [2021] 6 MLJ 1 endorsed a purposive interpretation of banking records that takes into account current practices in the ordinary business of banks. The majority judgment, delivered by Rhodzariah Bujang FCJ, held that:

> [133] ... I am persuaded that the definition of 'banker's book' under the Act must be given a purposive interpretation and that it is to be done with an updating approach as outlined earlier but in so doing I would still and must confine the meaning of 'other books' with 'ledger, day book, cash book and account book'. So it cannot be just any documents in the bank's possession which comes within that definition although, as I had said earlier, those very same documents produced or kept by the bank in accordance with advancement in technology such as computers and other forms of information technology should qualify. In other words, as rightly submitted by learned counsel for the respondents, 'other books' should be considered *ejusdem generis*.

[90] The court further clarified that this purposive interpretation with an updating approach keeps pace with technological advancements while maintaining proper legal boundaries:

> [134] Based on the qualification above, I would thus answer the second question posed in the affirmative only in so far as 'the current practices in the ordinary business of the bank' relates to the technological advances which I had alluded to earlier and no other.

[91] This interpretation ensures that "other books" in the definition are considered ejusdem generis with ledgers, day books, cash books, and account books, allowing for technological changes in record-keeping while preventing the definition from encompassing just any documents in a bank's possession. This necessarily encompasses various modern banking products and facilities through which funds might be transferred or accessed, and the purposive interpretation of banking records in Protasco is sufficiently wide to include all documents sought in Schedule A.

[92] The inclusion of requests for information about ATM cards, banking facilities, and other banking products is justified by the need to understand all potential means through which the loan funds might have been accessed or transferred. The court recognises that the purpose is to identify and determine where these monies have been subsequently transferred, withdrawn, or dissipated, thereby enabling further proceedings against appropriate individuals or entities that may be in receipt of these monies. This comprehensive approach directly underpins the necessity for broad discovery to trace complex fund movements.

[93] In sophisticated financial fraud, funds are rarely moved through simple account-to-account transfer alone. The nature of modern banking means that funds can be accessed and transferred through multiple channels and instruments. The breadth and specificity of the requests in Schedule A for items such as cheque images, debit vouchers, GIRO payments, RENTAS, telegraphic transfers, and documents related to various banking products demonstrate an understanding that funds can be moved through diverse and sophisticated channels in modern financial transactions. This reflects an attempt to capture all possible avenues of fund dissipation, ensuring no potential channel is overlooked.

[94] The English Court of Appeal in *Bankers Trust Co v. Shapira* recognised that effective asset tracing requires comprehensive discovery, establishing that "unless there was the fullest possible disclosure the fund could not be traced." This principle remains even more relevant in today's complex banking environment where fraudulent funds may be moved through multiple accounts and transactions. The case establishes that discovery is permitted against third parties where there is very strong evidence to support a *prima facie* case of fraud and good grounds for thinking the money belongs to the plaintiff.

[95] As established in *Arab Monetary Fund v. Hashim*, discovery should be granted where there is "a real prospect that the information sought might lead to the location or preservation of assets to which the plaintiff is making a proprietary claim." A banker's trust order enables courts to require third parties who have become involved in the transaction chain to make full disclosure of relevant documents and information to enable funds described as the property of the plaintiff to be located and protected from dissipation. The court finds that the comprehensive documentary evidence and transaction patterns established satisfy both the bankers' trust threshold of very strong evidence to support a *prima facie* case of fraud and the Arab Monetary Fund test of a real prospect for asset location and preservation.

[96] Furthermore, the discovery sought is not unbounded. Schedule A of the application provides clear parameters both in terms of the types of documents sought and their temporal scope, being limited to the period from

the first loan disbursement. The court observes that the application includes specific categories of documents that are precisely enumerated rather than general, covering account opening or closing forms and related documents, documents disclosing identities of authorised signatories, cheques drawn and cheque images, bank statements, debit vouchers, fund transfer applications, GIRO payments, RENTAS, telegraphic transfers, orders, and internal memoranda, as well as documents related to modern banking products including ATM cards, credit cards, debit cards, banking facilities, online banking facilities, and mobile application facilities.

[97] The temporal scope is clearly defined as the period from and including 2 July 2012 (the date when the first tranche of the loan was disbursed) to the date of the order. This specific temporal limitation demonstrates that the discovery is targeted rather than unlimited in scope. The court notes that unlike cases where applications may be bereft of specifics or particularisation, this application sufficiently details and particularises the documents sought, thereby meeting the requirements for specificity.

[98] The High Court in *Phoenix Biqq Sdn Bhd v. Yam Kong Wah & Anor* [2022] CLJU 1796; [2022] 1 LNS 1796; [2022] MLJU 1817 emphasised that "an application under ss. 6 and 7 of BBEA has to identify and specify the documents sought" and that "the plaintiff must identify and specify the documents sought in the application, the entries in the said defendants' and the other named entities' bank accounts with CIMB Bank and/or CIMB Islamic including the specific periods of the transaction to ensure the documents sought are within the definition of 'banker's book'". The court further noted that "failure to describe, specify and/or identify the documents, may open the danger of the plaintiff having access to documents and information which are not within the definition under s. 2 of the Bankers' Book (Evidence) Act 1949".

[99] The court distinguishes this application from Phoenix Biqq, noting that unlike the discovery application in that case which the court found to be "very wide" with "generalised" descriptions and "no specification of documents that are intended to be inspected", the present application sufficiently identifies the type of documents and limits the period, thereby addressing the specificity requirements established in Phoenix Biqq. The fact that the categories are comprehensive does not make them improper – rather, it reflects the legitimate need to understand all potential means through which the loan funds might have been dissipated. The comprehensive nature of the requests is justified by the stated desire to ascertain if payments unlawfully received were withdrawn or transferred, to ascertain details of such transfers, and to trace and locate these monies.

[100] The sophistication of modern banking and the complexity of the alleged fraud justify the scope of discovery sought. The court recognises that this application seeks to trace and locate the fund flow of the loan sum which was unlawfully received by the defendants, emphasising that the discovery would identify and determine where these monies have been subsequently transferred, withdrew, or dissipated. This objective inherently recognises the complex nature of financial transactions and the need for a broad understanding of fund movements in sophisticated fraud cases.

[101] This is not a fishing expedition but rather a carefully structured request for specific categories of documents that could reasonably be expected to assist in tracing the movement of the loan funds through various banking channels and instruments. While objections have been raised characterising the application as a fishing expedition, the court finds that the request is consistently framed as a targeted effort to trace and locate specific funds, with documents that are relevant and necessary for the fair disposal of the proceedings. The specificity of Schedule A, which lists detailed categories of documents and is adequately and sufficiently particularised, supports the finding that this constitutes a carefully structured request rather than speculative discovery.

[102] The comprehensive nature of the requests serves the legitimate purpose of ensuring no potential avenue for fund movement is overlooked. The court observes that the comprehensive list of modern banking products and facilities in Schedule A, including ATM cards, credit cards, debit cards, online banking, and mobile application facilities, demonstrates the necessary scope to cover all potential means through which loan funds might have been dissipated. This broad approach reflects the reality that in sophisticated financial fraud, funds are often moved through multiple channels and complex transaction chains, requiring comprehensive disclosure to enable effective tracing. The discovery enables parties to take further proceedings against appropriate individuals or entities that may be in receipt of these monies, fulfilling the fundamental purpose of asset tracing.

[103] The core purpose articulated is to trace and locate these monies, which is directly supported by the principles from *Bankers Trust Co v. Shapira*, which established that "unless there was the fullest possible disclosure the fund could not be traced," and *Arab Monetary Fund v. Hashim*, which recognised discovery where there is "a real prospect that the information sought might lead to the location or preservation of assets to which the plaintiff is making a proprietary claim." These authorities confirm that comprehensive discovery is both legally justified and practically necessary to protect the plaintiff's proprietary interests and enable full disclosure of facts which would enable funds to be located and protected from dissipation.

Relevance Of Roslina, BVS Trinity And VCB Malaysia's Connection To Original Loan Transaction

[104] The said defendants emphasise the complete disconnection of Roslina, BVS Trinity and VCB Malaysia from the original loan transaction, arguing that they were neither parties to the loan agreement, nor involved in the pre-disbursement period or project execution. They contend that this fundamental separation from the loan transaction should shield them from invasive discovery orders targeting their banking records.

[105] The plaintiff counters that the later receipt of funds by Roslina, BVS Trinity and VCB Malaysia traceable to the loan sum makes them proper subjects of discovery, regardless of their lack of direct involvement in the original transaction. The plaintiff points to the R&M's findings of substantial unexplained payments to them, including RM9.5 million to BVS Trinity, RM400,000 to VCB Malaysia, and RM10,000 to Roslina, suggesting their involvement in the alleged misappropriation of loan funds.

[106] I find the said defendants' argument regarding their separation from the original loan transaction unpersuasive. This court recognises that the purpose of discovery in cases involving alleged misappropriation is to ascertain whether payments were unlawfully received and subsequently transferred or withdrawn from the recipients' bank accounts, and to trace and locate such monies. Roslina, BVS Trinity and VCB Malaysia's disconnection from the original loan transaction cannot shield them from legitimate discovery aimed at investigating subsequent fund movements.

[107] The English Court of Appeal in *Bankers Trust Co v. Shapira* established the fundamental principle that discovery may be ordered against third parties who become mixed up in the fraudulent acts of others, even if they bear no personal liability. Lord Denning emphasised that such parties "come under a duty to assist the person who has been wronged by giving him full information," and that where there is very strong evidence of fraud and good grounds for thinking the money belongs to the plaintiff, comprehensive discovery is justified because "unless there was the fullest possible disclosure the fund could not be traced."

[108] As further refined in *Arab Monetary Fund v. Hashim*, third-party discovery is justified where there exists a reasonable expectation that the information sought will contribute to the identification or protection of assets over which the plaintiff asserts proprietary rights. The fact that Roslina, BVS Trinity and VCB Malaysia were not original parties to the loan agreement does not immunise them from discovery where there is evidence suggesting they may have received misappropriated funds, as the courts recognise that sophisticated fraud often involves multiple parties and complex transaction chains. The focus is specifically on protecting a party's proprietary interest in claims involving alleged fraud, enabling the fullest possible disclosure necessary for effective asset tracing and recovery.

[109] The evidence before this court demonstrates substantial unexplained payments to Roslina, BVS Trinity and VCB Malaysia from Aries, accompanied by significant irregularities in documentation that raise serious concerns about the legitimacy of these transactions. Specifically, the court notes the R&M's discovery of an unjustified RM10,000 cash cheque payment to Roslina on 30 October 2018, which was not backed by any supporting documents. More substantially, Aries made payments totalling RM9.5 million to BVS Trinity, comprising RM9 million that was purportedly intended for Paneagle Holdings but was actually transferred to BVS Trinity, and RM500,000 that was ostensibly for Zeta Resources but was in fact made to BVS Trinity. Additionally, a payment of RM400,000, though purportedly for Gelombang Biru Telco and Gentle Impact, was actually made to VCB Malaysia.

[110] These circumstances reveal a systematic pattern of payment vouchers being made out to different entities from the actual recipients, with fictitious payment vouchers being issued to conceal the siphoning of funds from Aries to Roslina, BVS Trinity and VCB Malaysia. These irregularities raise legitimate questions about their receipt of funds potentially traceable to the loan, regardless of their lack of involvement in the original transaction. The focus of discovery in such cases is not on the recipient's connection to the original transaction, but rather on their potential receipt of misappropriated funds and the subsequent movement of such funds.

[111] Furthermore, the said defendants' argument ignores the reality of how sophisticated financial fraud often operates in contemporary commercial contexts. Modern fraudulent schemes typically involve funds being channelled through parties who may be deliberately distanced from the original transaction as part of a broader strategy to obscure the trail of misappropriated assets. This application specifically targets the period from the first loan disbursement on 2 July 2012 to trace the post-disbursement flow of funds, recognising that the fact that Roslina, BVS Trinity and VCB Malaysia were not involved in the loan's inception does not preclude their later involvement in the disposition of its proceeds through subsequent transfers. The evidence suggests that Aries unlawfully paid out funds from the loan sum to Roslina, BVS Trinity and VCB Malaysia after receiving the loan, countering any argument that such payments could not have originated from loan funds that had earlier left Aries' bank account.

[112] This court has already determined in dismissing the striking out applications that there is a reasonable cause of action against the said defendants, establishing the foundation for legitimate investigative discovery. The discovery sought represents a legitimate means of investigating the movement of funds to parties who, while not original participants in the loan transaction, may have been recipients of its proceeds through subsequent

transfers. The application aims to trace and locate the fund flow of monies unlawfully received by Roslina, BVS Trinity and VCB Malaysia, with a real prospect that the information may lead to the location or preservation of assets to which the plaintiff is making a proprietary claim. This approach is both relevant and necessary for the plaintiff's claims, particularly in identifying and determining where these monies have been subsequently transferred, withdrawn, or dissipated.

Conclusion

[113] Having considered all the submissions and evidence before this court, I am satisfied that the plaintiff has established the necessary legal and factual foundation for the discovery orders sought. The evidence demonstrates a *prima facie* case of fraud involving the systematic misappropriation of loan funds through a network of fictitious payment vouchers and concealed transfers, with substantial payments totalling over RM9.9 million flowing to Roslina, BVS Trinity and VCB Malaysia without adequate supporting documentation. The R&M's investigations have uncovered compelling documentary evidence of deliberate attempts to obscure the true destinations of funds, including the practice of issuing payment vouchers to entities different from the actual recipients – clear hallmarks of sophisticated financial fraud that warrant the fullest possible disclosure to enable effective tracing and recovery.

[114] The discovery sought serves the fundamental interests of justice by enabling the plaintiff to trace and locate assets that may be subject to its proprietary claims, while facilitating the proper preparation of this matter for trial. The comprehensive scope of documents requested in Schedule A reflects the reality that modern financial fraud exploits multiple banking channels and instruments, requiring correspondingly thorough investigative tools. The temporal scope from the first loan disbursement to the date of this order appropriately captures the extended period over which misappropriated funds may be layered through various transactions before reaching their ultimate destinations. This application represents not a fishing expedition, but a carefully structured and legally justified effort to pierce the veil of financial obfuscation and secure the evidence necessary for the fair adjudication of the plaintiff's claims.

[115] It is hereby ordered that:

(i) Maybank and/or Maybank Islamic shall, within 14 days from the date of service of this order, file and serve on the plaintiff an affidavit:

(a) specifying a list of documents with reference to the documents sought by the plaintiff, as set out in Schedule A herein ("list of Maybank documents"), which are in Maybank's and/or Maybank Islamic's possession, custody and/or power;

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(b) verifying the list of Maybank documents, stating whether the documents listed therein are or have at any time been in their possession, custody and/or power, and if the said documents have been but are no longer in their possession, custody and/or power, stating when they parted with and what has become of the same, including the parties to whom the said documents were transmitted and/or forwarded to; and

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(c) exhibiting copies of all the documents listed in the list of Maybank documents.

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(ii) the plaintiff and Maybank and/or Maybank Islamic may agree to any extension of time for Maybank and/or Maybank Islamic to file and serve on the plaintiff the affidavit as stated in para. (a) above;

(iii) the costs of this application and of complying with this order shall be borne by the plaintiff;

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(iv) the costs or expenses arising from or incidental to this application payable or incurred by the plaintiff or Maybank and/or Maybank Islamic, shall be costs recoverable by the plaintiff as damages against the defendants;

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(v) leave is granted to the plaintiff to rely on and produce Maybank's and/or Maybank Islamic's affidavit and its exhibited documents as stated in para. (a) above in this suit and in any proceedings, whether in Malaysia or elsewhere, for the purposes of tracing of monies.

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